

## **TITLE 17. CALIFORNIA AIR RESOURCES BOARD**

### **NOTICE OF PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE AIR TOXICS “HOT SPOTS” FEE REGULATION FOR FISCAL YEAR 2001-2002.**

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and location noted below to consider amendments to the Air Toxics “Hot Spots” Fee Regulation for Fiscal Year 2001-2002.

DATE: October 25, 2001

TIME: 9:00 a.m.

PLACE: Monterey Bay Unified Air Pollution Control District  
Board Room, 3rd Floor  
24580 Silver Cloud Court  
Monterey, CA 93940

This item will be considered at a two-day meeting of the ARB, which will commence at 9:00 a.m., October 25, 2001, and may continue at 8:30 a.m., October 26, 2001. This item may not be considered until October 26, 2001. Please consult the agenda for the meeting, which will be available at least 10 days before October 25, 2001, to determine the day on which this item will be considered.

This facility is accessible to persons with disabilities. If accommodation is needed, please contact the Clerk of the Board at (916) 322-5594, or Telephone Device for the Deaf (TDD) (916) 324-9531 or (800) 700-8326 for TDD calls from outside the Sacramento area, by October 10, 2001, to ensure accommodation.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

**Sections Affected:** Amendments to sections 90700, 90701, 90702, 90703, 90704 and 90705, title 17, California Code of Regulations (CCR) (The Air Toxics “Hot Spots” Fee Regulation).

The objective of the Air Toxics “Hot Spots” Fee Regulation (Fee Regulation) is to recover the State's costs and, where necessary, assist the local air pollution control and air quality management districts (districts) in recovering the costs of implementing and administering the Air Toxics “Hot Spots” Information and Assessment Act. The fees assessed through this regulation are used to inventory air toxics emissions, prioritize facilities, prepare risk assessments, review risk assessments, notify the public of potential health risks from exposure to the emissions, and provide guidance to the

facilities for reducing the potential risk from exposure to the emissions. The regulation specifically allocates the State's costs among the districts, and for 2001-2002, establishes facility fees for the five districts that have requested the ARB to adopt their facility fee schedules.

## **BACKGROUND**

The Air Toxics "Hot Spots" Information and Assessment Act of 1987 (the Act) (Health and Safety Code (H&SC) sections 44300 et seq.) established a program to compile an inventory of air toxics emissions from facilities in California and to assess the potential risks to public health as a result of exposure to those emissions. The Act also requires that the public be notified of facilities whose emissions pose potentially significant health risks. High-risk facilities must reduce their toxic emissions below the level of significance within five years pursuant to H&SC section 44391(a). The Act specifies activities that the ARB, the Office of Environmental Health Hazard Assessment (OEHHA), and the districts must carry out to implement the Act. The Act authorizes the ARB to adopt a fee regulation to ensure that costs incurred by the state and, upon request, districts to implement and administer the Air Toxics "Hot Spots" Program (Program) are recovered by assessing fees on facilities subject to the requirements of the Act (H&SC section 44380).

The Board adopted the first Fee Regulation in 1988. Each year thereafter, the ARB staff, in consultation with the Fee Regulation Committee (which is comprised of representatives of the ARB, the districts, and OEHHA) reviewed the Fee Regulation and proposed amendments for the ARB's consideration. The Fees are collected annually to partially offset the state's cost for implementing the Program. For each of the last eight years, the revenues from the state's portion of the Fees have decreased. The proposed amendments for fiscal year 2002-2003 will continue that trend. The fees for each fee category have remained stable over the last few years and the staff does not anticipate any need for changing the way the fees are calculated or collected. While fee rates have remained stable, the amount of fees paid by facilities has decreased as facilities reduce toxic emissions and drop into lower fee categories.

Districts may recover their Program costs by adopting their own fee rules or by requesting the ARB to adopt fee regulations for them. If a district requests the ARB to adopt its fee regulation, it must submit its Program costs, approved by its district governing board, to the ARB by April 1, prior to the beginning of the fiscal year for which the fees are to apply. Five districts requested that the ARB adopt their facility fee regulations and submitted district board approved costs for fiscal year 2001-2002 by the April 1, 2001 deadline.

The proposed regulation also contains recordkeeping and reporting requirements. In accordance with Government Code sections 11345.3(c) and 11346.5(a)(11), the ARB's Executive Officer has found that the recordkeeping and reporting requirements of the regulation are necessary for the health, safety, and welfare of the people of the State.

## **Comparable Federal Regulations**

The Act established an air quality program unique to the State of California. No equivalent federal requirement at this time targets toxics “Hot Spots” facilities. Accordingly, there is no conflict or duplication between this Fee Regulation and current federal regulations.

## **PROPOSED AMENDMENTS TO THE FEE REGULATION FOR FISCAL YEAR 2001-2002**

The staff proposes amendments to the Fee Regulation which will recover approximately \$900,000 in state costs to implement the Air Toxics “Hot Spots” Program in fiscal year 2001-2002. This represents more than an 80 percent reduction from fiscal year 1993-1994 in state revenues to implement and administer the program. This is a direct result of legislative changes to the Program, as well as changes that have streamlined the Program. The proposed amendments are summarized below.

### **Adoption of New Fee Schedules for Fiscal Year 2001-2002**

The state portion of the fees has been revised to reflect the changes in the number of facilities per fee category in each district based on the current status of facility risk. This revision results in a decrease of \$180,000 in fees that will be collected for fiscal year 2001-2002 from last year. Fee Schedules for five districts that have requested the ARB to include recovery of their district Program costs in the Fee Regulation were updated for fiscal year 2001-2002. These five districts are the Antelope Valley, Great Basin Unified, Lassen County, and Santa Barbara County Air Pollution Control Districts (APCDs), and the Mojave Desert Air Quality Management District (AQMD).

### **Delegation of Annual Update of the Fee Regulation to ARB Executive Officer**

The staff is proposing that the Board delegate authority for the administration of the annual Air Toxics Hot Spots fee program to the Executive Officer of the ARB. This will convert the update of the annual State Program costs and collection of the fees into an annual administrative process beginning in fiscal year 2002-2003. The fees assessed in future years will use the current method of calculating the fees. This proposal will streamline the annual fee update and collection process, provide districts and facilities more time to collect, review, and update the toxic emission data used to estimate the fees, and allow more flexibility in administering the program. This will allow the staff to reduce the amount of resources needed to administer the fee program and to devote more resources towards the actual goals of the “Hot Spots” program. These goals include identifying the sources of toxic air pollution emissions in California and gaining a better understanding of the risks posed by toxic air pollutants. Information on the assessment, collection and use of the fees will still be available to the public via an annual status report on the fee program.

### New Option for Recovery of District Program Costs

A new method for recovering district program costs is being proposed for districts that do not adopt local Hot Spots fee regulations beginning in fiscal year 2002-2003. This proposed amendment will authorize such districts to recover district program costs up to, but not to exceed, the State Program cost on a per-facility basis, from facilities that are subject to the State Fee Regulation. An accounting of the district Program costs for districts using this provision will be included in the annual status report on the fee regulation.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

The ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal, and supporting technical documentation. The staff report is entitled: "Initial Statement of Reasons for Proposed Rulemaking for the Amendments to the Air Toxics "Hot Spots" Fee Regulation for Fiscal Year 2001-2002".

Copies of the ISOR and full text of the proposed regulatory language, in underline and strike-out format to allow for comparison with the existing regulations, may be obtained from the ARB's Public Information Office, Environmental Services Center, 1001 "I" Street, 1<sup>st</sup> Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing (October 25, 2001).

Upon its completion, the Final Statement of Reason (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the web site listed below.

Inquiries concerning the substance of the proposed regulations may be directed to the designated agency contact persons, Randy Pasek, Chief, Emission Inventory Branch, Planning and Technical Support Division, at (916) 323-8398 or Chris Halm, Air Pollution Specialist, Planning and Technical Support Division at (916) 323-8372.

Further, the agency representative and designated back-up contact persons to whom nonsubstantive inquiries concerning the proposed administrative action may be directed are Artavia Edwards, Manager, Board Administration & Regulatory Coordination Unit, (916) 322-6070, or Amy Whiting, Regulations Coordinator, (916) 322-6533. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

If you are a person with a disability and desire to obtain this document in an alternative format, please contact the Air Resources Board ADA Coordinator at (916) 323-4916, or TDD (916) 324-9531, or (800) 700-8326 for TDD calls from outside the Sacramento area.

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the ARB Internet site for this rulemaking at <http://www.arb.ca.gov/regact/hotspots/01-02/01-02.htm>.

## **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The Executive Officer has determined that the amended Fee Regulation will impose a mandate upon and create costs to the districts with jurisdiction over facilities subject to the Act. However, the mandate does not require state reimbursement to the districts pursuant to Government Code sections 17500 et seq., and section 6 of Article XIII B of the California Constitution because the districts have the authority to levy fees sufficient to pay for the mandated Program (H&SC section 44380). These fees are intended to recover the costs of district implementation of the Air Toxics "Hot Spots" Program, including compliance with the amended Fee Regulation. The cost to the districts to implement the amended Fee Regulation is approximately 10 percent of the districts' total Program costs. For fiscal year 2001-2002, the total district Program costs are estimated to be \$2,700,000. Therefore, the costs to the districts to implement the amended Fee Regulation are approximately \$270,000.

The Executive Officer has determined that adoption of the proposed amendments to the Fee Regulation will impose a mandate upon and create costs to some publicly owned treatment works (POTWs). POTWs are subject to the Fee Regulation if they emit or use substances listed in Appendix A of the Emission Inventory Criteria and Guidelines Report (title 17, CCR, section 93300.5), release the specified quantity of at least one of the four specified criteria pollutants, or are classified by the district in one of the prescribed Program categories. The costs of complying with the Fee Regulation are not reimbursable within the meaning of section 6, article XIII B, California Constitution and Government Code sections 17500 et seq., because POTWs are authorized to levy service charges to cover the costs associated with the mandated Program. The ARB staff estimates the total cost for POTWs to comply with the Fee Regulation to be \$19,287 for fiscal year 2001-2002.

The Executive Officer has also made an initial determination that the proposed amendments to the Fee Regulation will not create costs or savings in federal funding to any state agency or program, or impose other non-discretionary costs or savings on local agencies.

The Executive Officer has also determined that the amended Fee Regulation will impose costs on affected state agencies. The costs to the ARB to implement and administer the Air Toxics "Hot Spots" Program, including the amended Fee Regulation, will be recovered by fees authorized by H&SC section 44380 and sections 90700-90705 of title 17, CCR.

Other affected state agencies (e.g., universities, hospitals, correctional institutions, and laboratories) that must pay fees pursuant to the amended Fee Regulation as emitters of specified pollutants should be able to absorb their costs within existing budgets and resources. Costs to these state agencies were estimated to total \$20,127 for fiscal year 2001-2002.

In developing the proposal, the staff has determined there is a potential cost impact on representative private persons or businesses directly affected by the regulation. The economic impact the Program fees have on individual facilities is related to the facility's prioritization score or the results of a health risk assessment. Program fees for those districts the state is adopting a fee schedule for, range from \$35 to \$15,715. The fees for specific facility program categories for those districts for which the state is adopting fee schedules can be found in Table 3 of Appendix I of the Initial Statement of Reasons for the proposed amendments to the Air Toxics "Hot Spots" Fee Regulation for fiscal year 2001-2002.

The Executive Officer has also made an initial determination that amendments to this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

All businesses that emit a criteria pollutant and a listed substance (H&SC sections 44320-44322; title 17, CCR, section 90702) must pay a "Hot Spots" fee, (H&SC sections 44380-44382; title 17, CCR, sections 90703-90705) unless specified conditions have been met, and will be affected by these proposed amendments. The amended fees would have little or no impact on the ability of California businesses to compete with businesses in other states. This is because the amended fees do not impose a noticeable impact on the profitability of California businesses. However, the amended fees may have an adverse impact on the ability of some California businesses operating with little or no margin of profitability. Appendix VII of the Staff Report includes a list of the categories of businesses that may be included in the scope of this regulation.

To comply with these proposed amendments, businesses will have to pay the fees assessed on them. These proposed amendments will not result in any additional reporting, record keeping, or other compliance requirements, beyond keeping records of payment.

The staff concludes that, overall, California businesses seem to be able to absorb the costs of the fees without significant adverse economic impact on their profitability. Although some businesses would potentially experience a greater reduction in their profitability than others, most businesses appear to be able to absorb the fee. However, the imposition of the amended fees may have a significant adverse impact on some businesses operating with little or no margin of profitability. The ARB has considered proposed alternatives that would lessen any adverse economic impact on businesses and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.

- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

Submissions may also include the following considerations which more closely apply to these amendments:

- (v) The establishment of differing payment requirements or timetables which take into account the resources available to businesses.
- (vi) Exemption or partial exemption from the fee requirements for businesses.
- (vii) Any other alternative that would lessen any adverse impact the fees may have on businesses.

The Executive Officer has also made an initial determination that the proposed regulatory action may affect the creation or elimination of jobs within the state of California, the creation of new businesses or the elimination of existing businesses within California, or the expansion of businesses currently doing business within California.

Finally, the Executive Officer has also determined that the regulation will affect small business. In an effort to reduce those potential impacts on small businesses, the ARB staff has placed a cap of \$300 for those facilities that fit the definition of small business in the Fee Regulation. Facilities that fit the definition of industrywide facilities found in H&SC section 44323 would be assessed an annual state portion of fees of \$35 under the proposed amendments.

Before taking final action on the proposed amendments to the regulations, the Board must determine that no reasonable alternative considered by the Board or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The imposition of the fees and the requirement that the fees, in the aggregate, cover costs of implementing the Program, are mandated by statute. However, the Fee Regulation includes a cap on fees for small businesses. Additionally, existing exemptions will continue to relieve lower-risk facilities from paying any fee. These provisions are meant to minimize the burden of the regulation.

### **SUBMITTAL OF COMMENTS**

The public may present comments relating to this matter orally or in writing at the hearing, and in writing, or by e-mail before the hearing. To be considered by the Board, written submissions not physically submitted at the hearing must be received by no later than **12:00 noon October 24, 2001**, and addressed to the following:

Postal Mail is to be sent to:

Clerk of the Board  
Air Resources Board  
1001 "I" Street, 23<sup>rd</sup> Floor  
Sacramento, California 95814

Electronic mail is to be sent to: [hs0102@listserv.arb.ca.gov](mailto:hs0102@listserv.arb.ca.gov) and received at the ARB by no later than **12:00 noon October 24, 2001**.

Facsimile submissions are to be transmitted to the Clerk of the Board at (916) 322-3928 and received at the ARB no later than **12:00 noon, October 24, 2001**.

The Board requests, but does not require, 30 copies of any written statement be submitted and that all written statements be filed at least 10 days prior to the hearing so that ARB staff and Board Members have time to fully consider each comment. The ARB encourages members of the public to bring any suggestions for modification of the proposed regulatory action to the attention of staff in advance of the hearing.

### **STATUTORY AUTHORITY AND REFERENCES**

Amendments to the Fee Regulation are proposed under the authority granted to ARB in H&SC sections 39600, 39601, 44321, 44344.4, 44344.7, 44380, and 44380.5. The purpose of the Fee Regulation is to implement, interpret, and make specific sections 44320, 44321, 44322, 44344.4, 44344.7, 44361, 44380, and 44380.5 of the H&SC.

### **HEARING PROCEDURES**

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the ARB may adopt the regulatory language as originally proposed, or with non-substantive or grammatical modifications. The ARB may also adopt the proposed regulatory language with other modifications if the text, as modified, is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language, as modified, could result from the proposed regulatory action. Such modifications are expected to include but are not limited to the following:

- (1) Districts' share of the State's costs may be revised on the basis of updating the number of facilities in the previously mentioned Program categories, changes to the State's budget, or adjustments to the category indices.



- (2) The specified amounts of fees may be adjusted on the basis of corrections to the numbers of facilities in the previously mentioned Program categories, changes to the State's budget, or adjustments to the category indices.
- (3) Fees specified by districts may be changed on the basis of information being provided by each such district.
- (4) Changes may be made to Appendix A of the regulation in response to information provided between this date and the public hearing.
- (5) Changes may be made to definitions in response to information provided between this date and the public hearing.

In the event that such modifications are made, the full regulatory text with the modifications clearly indicated will be made available to the public for written comment at least 15 days before it is adopted. The public may request a copy of the modified regulatory text from the Air Resources Board Public Information Office, 1001 "I" Street, Environmental Services Center, 1<sup>st</sup> Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

MICHAEL P. KENNY  
EXECUTIVE OFFICER

Date: August 28, 2001

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at [www.arb.ca.gov](http://www.arb.ca.gov)."*